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Filing date: **06/24/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91227233
Party	Plaintiff United States Olympic Committee
Correspondence Address	SUSAN A SMITH KENYON & KENYON LLP 1500 K STREET, NWSUITE 700 WASHINGTON, DC 20005 UNITED STATES ssmith@kenyon.com, tmdocketdc@kenyon.com, ekane@kenyon.com
Submission	Motion for Discovery Sanctions
Filer's Name	Susan A. Smith
Filer's e-mail	ssmith@kenyon.com, tmdocketdc@kenyon.com, ekane@kenyon.com
Signature	/Susan A. Smith/
Date	06/24/2016
Attachments	Motion for Sanctions for Failure to Participate in Discovery Conference.pdf(780549 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

The United States Olympic Committee,

Opposer,

v.

Ashraf Abuleil,

Applicant.

Opposition No. 91227233

**MOTION FOR SANCTIONS FOR FAILURE TO PARTICIPATE
IN REQUIRED DISCOVERY CONFERENCE**

Pursuant to 37 CFR § 2.120(g)(1) and Fed. R. Civ. Pro. 37(b)(2), Opposer, The United States Olympic Committee (“USOC”), respectfully moves the Board to sanction Applicant by entering judgment in favor of Opposer for Applicant’s failure to participate in the required discovery conference.

On April 5, 2016, the Board set a June 14, 2016 deadline for the parties to hold a discovery conference as required pursuant to 37 C.F.R. § 2.120(a)(2). *See* D.I. 2. On June 3, 2016, counsel for Opposer, Susan Smith, contacted Applicant at his email address of record provided to the Board, inquiring about Applicant’s availability to hold the discovery conference. *See* Declaration of Susan A. Smith (“Smith Decl.”), Exhibit A. Ms. Smith neither received a response to the June 3, 2016 email nor did the communication get returned as undeliverable. *See* Smith Decl., ¶2.

On June 10, 2016, Ms. Smith sent a second communication to Applicant by email, reminding Applicant of his duty to participate in a discovery conference and informing him of the Board deadline. *See id.* She neither received a response to the June 10, 2016 email nor did her communication get returned as undeliverable. *Id.* On June 14, 2016 (the deadline to hold the conference), Ms. Smith sent a third communication to Applicant to his address of record requesting yet again to hold the required discovery conference. *Id.* She neither received a response to the June 14, 2016 email nor did her communication get returned as undeliverable. *Id.*

Ms. Smith also tried to contact Applicant by telephone, but he failed to provide a telephone number to the USPTO, neither in his trademark application nor in his Answer. *Id.* at ¶3.

Applicant has failed to participate in a discovery conference as required by 37 CFR 2.120(a)(2) and TBMP § 408.01(a). As set forth above, Opposer's counsel attempted to contact Applicant on numerous occasions in an effort to avoid bringing this motion. Applicant has not responded to any of Opposer's communications, even though it seems clear that Applicant received her communications. *Id.* Opposer further notes that Applicant appears to be an intellectual property attorney himself (see Exhibit B); therefore, he cannot plead ignorance of the TTAB rules.

“If a party fails to participate in the required discovery conference, ...the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure.” 37 CFR 2.120(g)(1). Fed. R. Civ. Pro. 37(b)(2)(A)(vi) provides the sanction of “rendering a default judgment against the disobedient party;” *See also* TBMP 527.01(a) (“The

Board may impose any of the sanctions provided in Fed. R. Civ. P. 37(b)(2) for failure to participate in a discovery conference, including judgment.”)

Applicant’s failure to respond to Opposer’s communications or participate in a discovery conference has prejudiced Opposer’s ability to pursue its Opposition. Not only has Applicant failed to comply with the Board’s rules and the April 5, 2016 Order (D.I. 2), Applicant’s actions have cost Opposer time and money chasing Applicant to participate in a mandatory conference that could otherwise have been spent on pursuing the merits of its Opposition. Applicant clearly has no interest in defending this case. Opposer therefore requests that the Board enter judgment against Applicant as a sanction for Applicant’s failure to participate in the discovery conference.

Respectfully submitted,

KENYON & KENYON LLP

Date: June 24, 2016

By: /Susan A. Smith/
Susan A. Smith
KENYON & KENYON LLP
1500 K Street, N.W.; Suite 700
Washington, D.C. 20005
Tel.: (202) 220-4200
Fax: (202) 220-4201

*Counsel for Opposer,
United States Olympic Committee*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of The United States Olympic Committee's *Motion for Sanctions for Failure to Participate in Required Discovery* Conference, including supporting declaration and exhibits, was served by first class mail on the Applicant on this 24th day of June, 2016:

Ashraf Abuleil
14938 Ventura Boulevard
Sherman Oaks, CA 91403-3455

/Susan A. Smith/
Susan A. Smith

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

The United States Olympic Committee,

Opposer,

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Applicant.

Opposition No. 91227233

DECLARATION OF SUSAN A. SMITH

The undersigned, Susan A. Smith, states that the following is true and accurate to the best of her information and belief and if called to testify, she could and would testify competently as follows:

1. I am a Partner in the firm Kenyon & Kenyon LLP, counsel of record for Opposer in the above captioned proceeding.
2. On June 3, 2016 I contacted Applicant at his email address of record to request to hold a discovery conference in the above captioned proceeding. Having received no response from Applicant, I contacted him again on June 10, 2016 at his email address of record reminding him of the discovery conference deadline and again requesting to hold the conference. When I received no response, I contacted him a third time on June 14, 2016 again requesting to hold a discovery conference. A true and correct

copy of the aforementioned email transmittals are attached hereto as Exhibit A.

Further, none of my communications were returned as undeliverable.

3. I planned on contacting Applicant by telephone, but could not locate any telephone number of record for Applicant as Applicant failed to provide any to the Board or in Applicant's Answer or in Applicant's trademark application.

4. Attached as Exhibit B is a true and correct copy of a website printed on June 24, 2016 located at <https://en.israel-bar.com/?lawyer=229&name=Lawyer+Abu+Leil+Ashraf+in+Ein+Mahel>.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

6/24/16



Susan A. Smith

Exhibit A

Smith, Susan

From: Smith, Susan
Sent: Tuesday, June 14, 2016 11:37 AM
To: 'AshAbuleil@mailovo.com'
Subject: RE: USOC - FUTURE OLYMPIAN case (TTAB)

Dear Mr. Abuleil,

Today is the deadline for the discovery conference. I have not received any response to my prior two emails to you below, but I have not received any indication that my emails did not go through, and this is the email address you provided to the USPTO. I am available today until 3:00 EST for the conference but will need at least 30 minutes advance notice.

Susan Smith

From: Smith, Susan
Sent: Friday, June 10, 2016 9:30 AM
To: 'AshAbuleil@mailovo.com'
Subject: RE: USOC - FUTURE OLYMPIAN case (TTAB)
Importance: High

Dear Mr. Abuleil,

It has been a week since my email to you, and I have not received a response. The discovery conference is mandatory under TTAB rules and must be completed by June 14, 2016. Please advise immediately concerning your availability.

Thank you,
Susan Smith

From: Smith, Susan
Sent: Friday, June 03, 2016 3:17 PM
To: 'AshAbuleil@mailovo.com'
Subject: USOC - FUTURE OLYMPIAN case (TTAB)

Dear Mr. Abuleil,

I represent the U.S. Olympic Committee in the above-referenced TTAB proceeding. In view of your answer, we are now required to have a discovery conference. I am available for a call on Tuesday, June 7 at noon EST. Please let me know if you are available then or suggest an alternate day/time.

Many thanks,

Susan A. Smith
KENYON & KENYON LLP
1500 K Street, N.W.
Washington, D.C. 20005

E-Mail: ssmith@kenyon.com

Direct: 202.220.4321

Fax: 202.220.4201

Internet: www.kenyon.com

Kenyon & Kenyon

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Exhibit B

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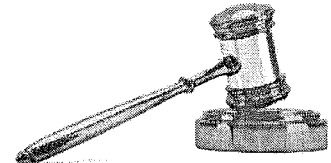
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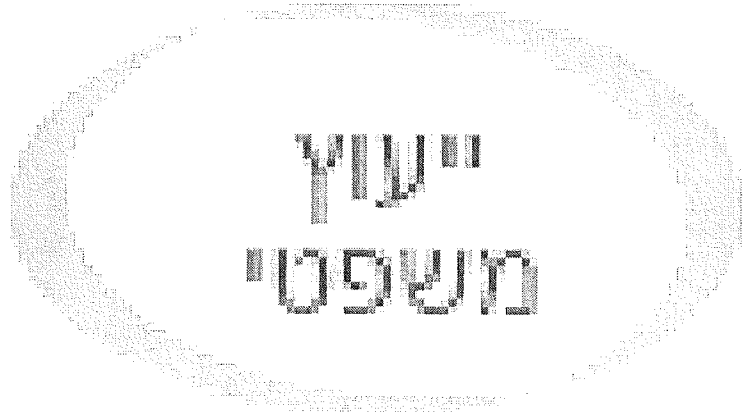
Phone: 077-7842231

Cellular: 054-8319242

צפיה בתצוגת הרחוב

Main areas:

- Intellectual Property
- Immigration and citizenship

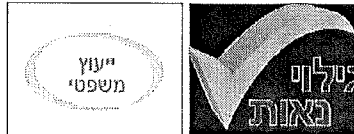


Subareas:

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- Consumerism
- Medical Malpractice

Specialities:

- Indictment
- Weapons License
- Indecent assault
- Land expropriation
- Corporate Law



Lawyer Abu Leil Ashraf in Ein Mahel

Lawyer Ashraf Abu Leil in North Attorney in Ein Mahel Main Street Ein Mahel, Areas of Practice Intellectual Property, Computers and Internet, Medical Malpractice, Immigration and citizenship, Consumerism and more. Specializing in Lease agreement and Administrative disqualification. You can get advice with regard to Party financing or Cargo insurance, Abu Leil Ashraf A lawyer with extensive knowledge and experience in fields Careless driving Public administration and Debt Collection.

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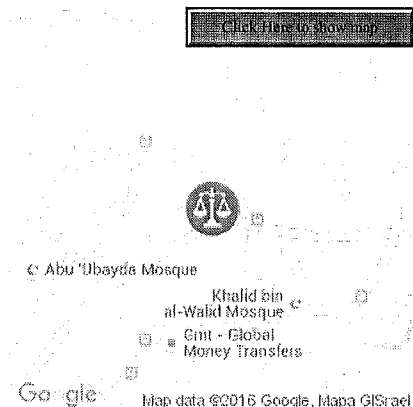
Ashraf Abu Leil, Your attorney in Ein Mahel and in North. You can get services Intellectual Property, Weapons License and Immigration and citizenship. The service is discreet and professional manner. Advice on issues Administrative disqualification, Indecent assault, Careless driving, Indictment or any other topic you can contact us by phone 077-7842231 Or visit our office located in Main Street , Ein Mahel. In addition, our firm specializes in handling Consumerism, Computers and Internet, Corporate Law and Land expropriation.

There may be inaccuracies in the areas of expertise of lawyers. The guarantee is the only surfer.

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Contact:

Phone: 077-7842231

Cellular: 054-8319242

Address: Main Street Ein Mahel

צפיה בתצוגת הרחוב

Mailing address:776 ת.ד. Ein Mahel

Direct contact lawyer:

* Name:

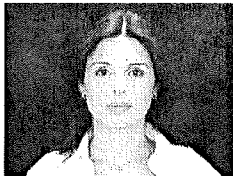
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